

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 SHIRL KEAHEY,

4 Plaintiff

5 v.

6 ZAKE THEW, et. al.,

7 Defendants

Case No.: 3:21-cv-00390-MMD -WGC

**Report & Recommendation of  
United States Magistrate Judge**

Re: ECF Nos. 1, 1-1

8  
9 This Report and Recommendation is made to the Honorable Miranda M. Du, Chief  
10 United States District Judge. The action was referred to the undersigned Magistrate Judge  
11 pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

12 Plaintiff has filed an application to proceed in forma pauperis (IFP) (ECF No. 1) and pro  
13 se complaint (ECF No. 1-1).

14 **I. IFP APPLICATION**

15 A person may be granted permission to proceed IFP if the person “submits an affidavit  
16 that includes a statement of all assets such [person] possesses [and] that the person is unable to  
17 pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense  
18 or appeal and affiant’s belief that the person is entitled to redress.” 28 U.S.C. § 1915(a)(1); *Lopez*  
19 *v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating that 28 U.S.C. § 1915 applies to  
20 all actions filed IFP, not just prisoner actions).

21 In addition, the Local Rules of Practice for the District of Nevada provide: “Any person  
22 who is unable to prepay the fees in a civil case may apply to the court for authority to proceed  
23

1 [IFP]. The application must be made on the form provided by the court and must include a  
 2 financial affidavit disclosing the applicant's income, assets, expenses, and liabilities." LSR 1-1.

3 "[T]he supporting affidavits [must] state the facts as to [the] affiant's poverty with some  
 4 particularity, definiteness and certainty." *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981)  
 5 (quotation marks and citation omitted). A litigant need not "be absolutely destitute to enjoy the  
 6 benefits of the statute." *Adkins v. E.I. Du Pont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

7 A review of the application to proceed IFP reveals Plaintiff cannot pay the filing fee;  
 8 therefore, the application should be granted.

## 9 **II. SCREENING**

### 10 **A. Standard**

11 "[T]he court shall dismiss the case at any time if the court determines that-- (A) the  
 12 allegation of poverty is untrue; or (B) the action or appeal-- (i) is frivolous or malicious; (ii) fails  
 13 to state a claim upon which relief may be granted; or (iii) seeks monetary relief against a  
 14 defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(A), (B)(i)-(iii).

15 Dismissal of a complaint for failure to state a claim upon which relief may be granted is  
 16 provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. § 1915(e)(2)(B)(ii)  
 17 tracks that language. As such, when reviewing the adequacy of a complaint under this statute, the  
 18 court applies the same standard as is applied under Rule 12(b)(6). *See e.g. Watison v. Carter*, 668  
 19 F.3d 1108, 1112 (9th Cir. 2012) ("The standard for determining whether a plaintiff has failed to  
 20 state a claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the  
 21 Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim."). Review under  
 22 Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of America*,  
 23 232 F.3d 719, 723 (9th Cir. 2000) (citation omitted).

1 The court must accept as true the allegations, construe the pleadings in the light most  
2 favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. *Jenkins v. McKeithen*,  
3 395 U.S. 411, 421 (1969) (citations omitted). Allegations in pro se complaints are "held to less  
4 stringent standards than formal pleadings drafted by lawyers[.]" *Hughes v. Rowe*, 449 U.S. 5, 9  
5 (1980) (internal quotation marks and citation omitted).

6 A complaint must contain more than a "formulaic recitation of the elements of a cause of  
7 action," it must contain factual allegations sufficient to "raise a right to relief above the  
8 speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "The pleading  
9 must contain something more ... than ... a statement of facts that merely creates a suspicion [of]  
10 a legally cognizable right of action." *Id.* (citation and quotation marks omitted). At a minimum, a  
11 plaintiff should include "enough facts to state a claim to relief that is plausible on its face." *Id.* at  
12 570; *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

13 A dismissal should not be without leave to amend unless it is clear from the face of the  
14 complaint that the action is frivolous and could not be amended to state a federal claim, or the  
15 district court lacks subject matter jurisdiction over the action. *See Cato v. United States*, 70 F.3d  
16 1103, 1106 (9th Cir. 1995); *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990).

## 17 **B. Plaintiff's Complaint**

18 Plaintiff's complaint names as defendants Reno Police Lieutenant Zake Thew, Reno  
19 Police Officer Chris Waddle, Reno Police Chief Soto, and Reno Police Officer More.

20 Plaintiff alleges that Lieutenant Thew did not investigate a report about an attack on  
21 December 30, 2016 (the report was apparently made on January 5, 2017). In her request for  
22 relief, she states that she wants him to get that person and then she wants his 401k, his pension  
23 and for him to go to Fort Leavenworth. Plaintiff then states that she left messages for Chief Soto

1 for six years and never heard from him. She asserts that Officer Chris Waddle helped CPS  
2 kidnap her two grandsons, and states she is suing for alienation of affection.

3 Plaintiff's claim against Thew is based only a failure to investigate a report, which does  
4 not rise to the level of a constitutional violation. *See Gomez v. Whitney*, 757 F.2d 1005, 1006 (9th  
5 Cir. 1985) (per curiam) ("we can find no instance where the courts have recognized inadequate  
6 investigation as sufficient to state a civil rights claim unless there was another recognized  
7 constitutional right involved."). Plaintiff does not identify another recognized constitutional  
8 right. Therefore, the claim against Thew should be dismissed.

9 With respect to Chief Soto, Plaintiff only alleges that he has not returned her calls;  
10 however, this also does not rise to the level of a constitutional violation.

11 Plaintiff includes no allegations with respect to Officer More; therefore, Officer More  
12 should be dismissed.

13 Finally, as to Officer Waddle, Plaintiff states that he helped CPS kidnap her two  
14 grandsons and sues for alienation of affection.

15 In case 3:21-cv-00391-RCJ-CLB, plaintiff sued CPS and multiple CPS employees  
16 regarding a visitation dispute with Plaintiff and her grandchildren, and she also alleged alienation  
17 of affection in that case. Judge Baldwin noted that Nevada had abolished claims for alienation of  
18 affection by statute, so that cannot be a foundation for relief. (*See* ECF No. 4 at 4 in 3:21-cv-  
19 00391-RCJ-CLB.) Judge Baldwin further pointed out that federal courts do not have jurisdiction  
20 to resolve domestic relations disputes involving child custody. (*Id.*, citing *Ankenbrant v.*  
21 *Richards*, 504 U.S. 689, 703 (1992); *Pearson v. Babbitt*, 708 F.2d 465, 466 (9th Cir. 1983)).  
22 Therefore, this claim should also be dismissed.  
23

1 In case 3:21-cv-00391-RCJ-CLB, the court determined that the action should be  
2 dismissed with prejudice because amendment would be futile. The court likewise recommends  
3 dismissal of this action with prejudice. Plaintiff has filed several civil rights actions that are  
4 nonsensical and incomplete, and this one is no different. *See* 3:21-cv-00391-RCJ-CLB, 3:21-cv-  
5 00396-MMD-WGC.

### 6 **III. RECOMMENDATION**

7 IT IS HEREBY RECOMMENDED that the District Judge enter an order:

8 (1) **GRANTING** Plaintiff's IFP application (ECF No. 1). Plaintiff is permitted to  
9 maintain this action without prepaying the filing fee or giving security therefor. This  
10 order granting IFP status does not extend to the issuance of subpoenas at government  
11 expense.

12 (2) The complaint (ECF No. 1-1) should be **FILED**.


13 (3) The action should be **DISMISSED WITH PREJUDICE** for failing to state a claim  
14 upon which relief may be granted.

15 The Plaintiff should be aware of the following:

16 1. That she may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to  
17 this Report and Recommendation within fourteen days of being served with a copy of the Report  
18 and Recommendation. These objections should be titled "Objections to Magistrate Judge's  
19 Report and Recommendation" and should be accompanied by points and authorities for  
20 consideration by the district judge.

1           2. That this Report and Recommendation is not an appealable order and that any notice of  
2 appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed  
3 until entry of judgment by the district court.

4  
5 Dated: January 4, 2022

6   
7 William G. Cobb  
8 United States Magistrate Judge  
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